

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 516 OF 2006
IN
ARBITRATION PETITION NO. 394 OF 2005
In
Arbn.Case No.A/91/03-04

Shri Vijaykumar Munnalal .. Appellant.

V/s.

M/s.Aardee Syntex Pvt.Ltd., .. Respondent.

Mr.D.F.Sharma i/by M/s.Dharam & Co. for the Appellant.

Mr.N.V.Walawalkar i/by Mr. R.G.Jain for Respondent.

CORAM : R.M.LODHA & S.A.BOBDE, JJ.

DATED : 25TH AUGUST, 2006.

P.C.:

. The appellant suffered the Award made by the Arbitral Tribunal dated 17th of February, 2004 in Arbitration Case No.A/91/2003-04, filed by the present respondent. He challenged the Award by filing Arbitration Petition under section 34 of the Arbitration and Conciliation Act, 1996.

2. The ground that was set up by the appellant in challenging the Award was that no notice from the Arbitral Tribunal was received and that he had already closed his business at Chudiwala Gully, Naya Gunj,

Hathrus, (U.P.) address and shifted his residence. In support of his case that he had closed his business from the said place, the appellant produced a receipt of income-tax intimation given to the Income Tax Officer.

3. In opposition to the Arbitration Petition, the present respondent filed affidavit and specifically stated that the notices of the Arbitral Proceedings were duly served upon the appellant by the respondent at 492, Chudiwala Gully, Naya Gunj, Hathras, U.P., on 1st of August, 2003 and 18th of August, 2003, i.e. prior to closure of business of the appellant.

4. The appellant did file rejoinder, denying the factum of receipt of the notice on 1st August, 2003 and 18th August, 2003.

5. The learned single Judge was not satisfied with the submission of the appellant that no notice was received. The learned single Judge did not believe the case of the appellant that he had shifted his business from the place he was carrying on his business.

6. The learned single Judge, accordingly, dismissed the Arbitration Petition on 17th January, 2006. Aggrieved thereby, the present Appeal has been preferred.

7. The counsel for the appellant -petitioner submitted before us that no notice of the Arbitral Proceedings was received. He would submit that the appellant had closed his business from Chudiwala Gully, Naya Gunj, in the month of November, 2003 and shifted to some other place. He also submitted that the factum of receipt of notice on 1st August 2003 and 18th August, 2003, has been denied by the appellant in the rejoinder.

8. It is true that the appellant has denied receipt of notices sent by the Hindustan Chamber of Commerce on 1st August, 2003 and 18th August, 2003. However, it is seen from the affidavit filed by the respondent that the notices sent by the Hindustan Chamber of Commerce dated 1st August, 2003 and 18th August, 2003 were received. Copy of the acknowledgement due was placed for our perusal for the notice dated 1st August, 2003, after giving the copy to the counsel for the appellant. The acknowledgment, thus, shows that the envelope cover was sent by the Hindustan Chamber of Commerce, Mumbai to M/s. Krishnakumar Mahendrakumar, 492, Chudiwali Gully, Naya Gunj, Hathras (U.P.). The envelope cover was sent from Bombay on 4th of August, 2003 and received at Hathras on 9th August, 2003 and it bears initial of some person. The counsel for the appellant sought to contend

that initial was not that of the appellant. We are not pursued to go into this enquiry. Presumption has to be drawn that the addressee received the cover with address 492, Chudiwali Gully, Naya Gunj, Hathras (U.P.). That is the address where the appellant was carrying on business in the month of August, 2003. That is not in dispute. The bald denial by the appellant does not rebut the presumption.

9. In this backdrop, the finding of the learned single Judge that the appellant failed to prove that no notice of Arbitral Proceedings was received by him, does not suffer from any legal infirmity, warranting interference in Appeal.

10. Appeal is dismissed in limine.

11. Prayer for interim relief is rejected.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)

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